

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petitions No. 1/MP/2012  
124/MP/2012  
82/MP/2013  
10/MP/2014**

**Coram:**

**Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member**

**Date of Order: 7.7.2022**

**Petition No. 1/MP/2012**

**In the matter of:**

Levy of UI Charges in violation of Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009 and Back-up Supply Charges under the Karnataka Electricity Regulatory Commission (Open Access) Regulations, 2004 for an inter-State Open Access transactions

**And in the matter of**

Sadashiva Sugars Limited  
Venus Building, 1/2., 3<sup>rd</sup> Floor. I Main Raod  
Kalyanmantapa Road, Jakkasnadra  
Bangalore- 560034

**Petitioner**

**Versus**

State Load Dispatch Centre- Karnataka  
Karnatka Power Transmission Corporation Limited  
Ananda Rao Circle, Palace Road  
Bangalore- 560009

**Respondent**

**Petition No. 124/MP/2012**

**In the matter of:**

Petition under section 79 (1) (c) of the Electricity Act, 2003 and Regulation 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 read with Regulation 27 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999

**And in the matter of:**

Falcon Tyres Limited  
KPS Road, Metagalli  
Mysore-570016

**Petitioner**

**Versus**

State Load Dispatch Centre- Karnataka  
Kaveri Bhawan, K.G Road  
Bangalore- 560009 ...

**Respondent**

**Petition No. 82/MP/2013**

**In the matter of :**

Levy of Back Up Supply Charges and withholding of UI Charges in Violation of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008, during the Grant of Inter State Open Access

**And in the matter of:**

Dhruvesh Metasteel Private Limited

**Petitioner**

**Versus**

State Load Dispatch Centre- Karnataka

**Respondent**

**Petition No. 10/MP/2014**

**In the matter of :**

Levy of UI charges in violation of Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009 and backup supply charges under the Karnataka Electricity Regulatory Commission (Open Access) Regulations, 2004 for an inter-State open access transaction.

**And in the matter of:**

Shamanur Sugars Limited  
374, 4th Main, P.J. Extension,  
Davanagere-577 002, Karnataka

**Petitioner**

**Versus**

State Load Dispatch Centre, Karnataka  
Ananda Rao Circle, Palace Road,  
Bangalore-560 009

**Respondent**

**Parties present:**

Shri Anantha Narayana M G, Advocate for Petitioners  
Shri Shridhar Prabhu, Advocate for Petitioners  
Shri Siddaveer Chakki, Advocate for Petitioners  
Ms. Sumana Naganand, Advocate, SLDC, Karnataka  
Ms. Medha M Puranik, Advocate, SLDC, Karnataka

**ORDER**

The present batch of Petitions have been received by way of remand back from the Appellate Tribunal vide judgment dated 16.4.2019 in Appeal no. 26 of 2013 & Batch Matter. The present batch of Petitions contains a similar question of law pertaining to applicability of Unscheduled Interchange Charges (UI Charges) and Back-Up Supply Charges (BSP Charges), which were disposed by this Commission on different dates as under:

S. No.	Petition No.	Date of Order
1.	1/MP/2012	19.11.2012
2.	124/MP/2012	24.12.2012
3.	82/MP/2013	20.01.2014
4.	10/MP/2014	24.03.2017

2. The Appellate Tribunal vide its judgment dated 16.4.2019 disposed of Appeal No. 26 of 2013 & Batch. The relevant extracts of the Appellate Tribunal judgment dated 16.4.2019 is as under :

*10. After microscopic evaluation of the entire material available on records and after taking into consideration the discussion, reasoning and findings regarding Issue Nos.1 & 2 mentioned above, we are of the considered opinion that as specified under the CERC Open Access Regulations, no charges other than those specified under Regulation 20 (6) shall be payable by any person granted short term open access under these Regulations. However, if any generating company consumes power from the state grid for any purpose, it is liable to pay supply charges as applicable under the KERC Regulations, 2004 (as amended). Accordingly, the orders passed by CERC in various petitions stipulated above (Janki orders and others) would need to be corrected to remove, pointed out inconsistencies and also, to provide clarity on various charges namely backup supply charges and distribution/supply charges. In view of these facts and circumstances of the case, the instant appeals deserve to be partly allowed and the impugned orders passed by the first Respondent/CERC are liable to be set aside so far it relate to the findings in the preceding paragraph above.*

#### **ORDER**

*Having regard to the factual and legal aspects of the matter as stated above, we are of the considered opinion that issues raised in the appeals have merits and hence, these appeals are partly allowed. The impugned orders passed by first Respondent/Central Electricity Regulatory Commission dated 19.11.2012, 24.12.2012, 20.01.2014 and 29.04.2015 in Petition Nos.1/MP/2012, 124/MP/2012, 82/MP/2013 and 10/MP/2014 respectively are hereby set aside so far it relate to the prayer sought in the instant appeal. The matter stands remitted back to the first Respondent/CERC with the direction to pass the appropriate order in compliance of the observations made in Paragraph No.10 of this judgment, as stated above, as expeditiously as possible at any rate within a period of six months from the date of appearance of the parties*

3. Before we proceed further, we feel it is appropriate to recapitulate the contentions of the parties and orders of this Commission in the present batch of remanded back Petitions.

**Petition No. 1/MP/2012**

4. The Petitioner in Petition No. 1/MP/2012 owns and operates a 15.5 MW cogeneration power plant at Nainegalli Village in Bagalkot District in the State of Karnataka and is connected to the State Grid. Tata Power Trading Company Limited executed the Power Purchase Agreement dated 3.3.2008 with the Petitioner. The power generated used to be exported outside the State of Karnataka by availing inter-State open access under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (hereinafter to be referred as 2008 Open Access Regulations).

5. The Petitioner had averred that the Respondent was not entitled to collect the BPS Charges as it did not supply the backup power and could not do so because such supply amounts to trading in electricity which the respondent cannot undertake in view of Section 31 of the Electricity Act.

6. The contention of the respondent was that the BPS Charges are payable by the generating company drawing electricity in terms of the Karnataka Open Access Regulations. The respondent has clarified that the BPS Charges are levied on the petitioner for consumption of electricity by drawing electricity from Grid for startup and other purposes when the generating station of the petitioner is under outage. The respondent has contended that for the electricity drawn by a generating company, including the petitioner and also other similarly placed consumers, the charges as prescribed by the Karnataka State Commission are payable.

7. With regard to Back Up Supply Charges, the relevant extracts of Commission order dated 19.11.2012 in Petition No. 1/MP/2012 is as under :

*“17. The petitioner’s next grievance relates to billing of the BPS Charges. The petitioner has contended that no such charges are payable under the Central Open Access Regulations. The respondent has submitted that the BPS Charges are payable by the petitioner in terms of clause (viii) of Regulation 11 of the Karnataka Open Access Regulations. Clause (viii) of Regulation 11 of the Karnataka Open Access Regulations which is extracted hereunder provides for levy of the open access charges:*

*“11. Open Access Charges*

*The charges for the use of the transmission/distribution system by an open access customer shall be regulated as under:*

*(i) to (vii) xxx*

*viii) Charges for arranging backup supply from the grid shall be payable by the open access customer in the event of failure of contracted supply. In case outages of generators supplying to a consumer on open access, standby arrangements should be provided by the licensee on payment tariff for temporary connection to that consumer category as specified by the Commission.*

*18. The BPS Charges billed by the respondent can be related to the first part of clause (viii) of Regulation 11 ibid as the second part applies in case where the generating company supplies power to a consumer under the open access, which is not the present case. The first part of clause (viii) lays down that the charges for arranging backup supply from the grid are payable by the open access customer in the event of failure of contracted supply. In our opinion this provision covers the cases where a person, whether a consumer or a generating company or a licensee (the open access customer), is being supplied power under a contract but is unable to get the contracted supply. In such an event, the arrangement is to be made for backup supply from the Grid to meet the demand and under these circumstances the person concerned becomes liable to pay the charges for making arrangement for backup supply. The charges payable under clause (viii) of Regulation 11 of the Karnataka Open Access Regulations do not apply to a generating company exporting power by availing the inter-State open access. Further, the first part can be invoked when there is failure of contracted supply. In the present case there is no allegation that the petitioner failed to meet the contracted supply. Therefore, levy of the BPS Charges on the petitioner in terms of clause (viii) of Regulation 11 of the Karnataka Open Access Regulations read with clause (3) of Regulation 16 of the Central Open Access Regulations cannot be justified.”*

***20. This Commission at the hearing on 26.4.2012 had directed the respondent to file inter alia the quantum and duration of electricity consumed and drawn by the petitioner when its generation was under shut-down during the period of open access. The respondent filed its affidavit to place on record certain information. The respondent has, however, not filed any details of power consumption by the petitioner. The petitioner has denied that it ever availed of the backup supply from the Grid. Therefore, there is no basis for the respondent’s claim that the petitioner has drawn power from the State Grid. Accordingly, billing of the BPS Charges is not in order. Even if it is accepted that the petitioner drew power from the State Grid, energy drawl should be accounted for as the UI, that is, deviation from the schedule.***

*To explain this, let us presume that the petitioner had given generation schedule of 1.5 MW of for supply through the inter-State open access but because of outage of the generating station, it was forced to draw 0.5 MW from the Grid. In such a situation it would be accounted for as negative UI of 2 MW and the petitioner shall be liable to pay the UI Charges for 2 MW. It is pertinent to reiterate that the respondent has sought to justify billing of the BPS Charges primarily under clause (viii) of Regulation 11 of the Karnataka Open Access Regulations which contention we have already repelled. Therefore, the billing of the BPS Charges as per the impugned bills cannot be upheld.*

**Petition No. 124/MP/2012**

8. The Petitioner in Petition No. 124/MP/2012 owns and operates a 6 MW Biomass based power generating station in Mysore in the State of Karnataka, which is connected to the State Grid. Since November 2009 the power generated is being exported outside the State of Karnataka by availing inter-State open access under 2008 Open Access Regulations.

9. The petitioner has averred that the respondent is not entitled to collect the BPS Charges as no such charges are payable under the Central Open Access Regulations and that the Respondent could not have supplied the backup power because such supply amounts to trading in electricity which the respondent cannot undertake in view of Section 31 of the Electricity Act.

10. The respondent has submitted that the petitioner does not have the contracted load but is required by the Regulations of the Karnataka State Commission to pay charges for drawing electricity at the temporary rates as per the tariff schedule notified by the Karnataka State Commission. The respondent has submitted that LT17 tariff in the schedule is applicable to the petitioner for drawl of electricity during open access period in terms of Regulation 11 (viii) of the Karnataka Open Access Regulations, which is the only provision enabling the generating company to draw electricity from the Grid under the outage conditions. The respondent has further clarified that the BPS Charges are levied on the petitioner for consumption of electricity by drawing

electricity from Grid for startup and other purposes when the generating station of the petitioner is under outage.

11. The Commission in its order dated 24.12.2012 in Petition No. 124/MP/2012 observed as under :

*“16. .... The charges payable under clause (viii) of Regulation 11 of the Karnataka Open Access Regulations do not apply to a generating company exporting power by availing the inter-State open access. Further, the first part can be invoked when there is failure of contracted supply. In the present case there is no allegation that the petitioner failed to meet the contracted supply. Therefore, levy of the BPS Charges on the petitioner in terms of clause (viii) of Regulation 11 of the Karnataka Open Access Regulations read with clause (3) of Regulation 16 of the Central Open Access Regulations cannot be justified.*

*17. The respondent has further clarified that the BPS Charges as prescribed by the Karnataka State Commission are billed on the petitioner for consumption of electricity by drawing electricity from the Grid for startup and other purposes when its generating station is under outage during the open access period. **It is agreed that in case the petitioner is drawing power from the State Grid for any purpose, it cannot repudiate its liability liable to pay the charges for the power consumed. However, the charges have to be billed and collected in accordance with the regulations or orders of the Appropriate Commission.** The respondent has submitted that the petitioner does not have the contracted load but is required by the regulations of the Karnataka State Commission to pay charges for drawl of energy at the temporary rates as per the tariff schedule issued by the Karnataka State Commission, according to which LT-7 tariff is applicable in the case of the petitioner. **The respondent has not placed anything, the regulation or order of the Karnataka State Commission on record to show that LT-7 tariff applies to the petitioner for consumption of electricity by drawing electricity from the Grid while availing inter-State open access.** Therefore, we proceed on the basis that the LT-7 tariff does not apply in the case of the petitioner. Accordingly, it is not possible to accept the respondent's contention for billing of the BPS Charges based on LT-7 tariff. Under these circumstances, energy drawl by the petitioner should be accounted for as the UI, that is, deviation from the schedule.*

### **Petition No. 82/MP/2013**

12. The Petitioner in Petition No 82/MP/2013 owns and operates a 10 MW cogeneration based captive power plant at Hirebaganal village in Koppal Taluk and District in the State of Karnataka. The petitioner claims to sell the surplus generation over and above its captive consumption by availing the short-term inter-State open access under the Open Access Regulations. The petitioner has stated that it availed



the short-term inter-State open access from 2.12.2011 to 31.1.2012 and from 1.6.2012 to November, 2012.

13. The Petitioner has further alleged that the Respondent has levied Backup Supply Charges with every Bill issued for the inter-State open access, and also levied thereon Fixed Charges

14. The Respondent neither filed its reply and nor appeared, despite notice.

15. The Commission relied on its earlier order dated 24.12.2012 in Petition No. 124/MP/2012 and ordered as under :

*“9. The present case is covered under the principles decided in the order of this Commission as quoted above. Accordingly, the present petition is allowed. While availing the short term inter-State open access, the petitioner is not liable to pay any charges in addition to those specified under the Open Access Regulations. The petitioner is liable to pay the UI charges at 105% of the UI rates fixed by this Commission in case of under-generation and 95% of such rates for over-generation. The charges for drawl of power by the petitioner in the event of outages of its generating station during the Open Access Period shall be accounted for as the UI Charges and not as Backup Supply Charges. Accordingly, the respondent is directed to refund the excess UI Charges withheld, Backup Supply Charges and Fixed Charges already recovered for the Open Access Period, within a period of two months from the date of this order. In case the respondent fails to implement the order as directed within the stipulated date, the petitioner shall be entitled to claim interest at the rate of 9% per annum from the date of expiry of two months and up to the date of refund.”*

#### **Petition No. 10/MP/2014**

16. The petitioner owns and operates bagasse based co-generation power plant in the State of Karnataka. The petitioner is a registered consumer of the distribution company of Karnataka, namely Hubli Electricity Supply Company Limited (HESCOM). Since June 2016, the power generated is being exported to the State of Andhra Pradesh by availing inter-State open access under 2008 Open Access Regulations.

17. The Petitioner had challenged the levy of BPS charges.



18. The respondent, SLDC Karnataka had submitted that BPS Charges has been levied for consumption of electricity for the electricity drawn from the Grid for startup and other purposes in terms of the Karnataka Open Access Regulations and Regulations 11 (viii) of the said regulations in particular. The Respondent has further submitted that that the petitioner has failed to generate the contracted amount of power supply to the open access customers and was also drawing power for startup and other activities. The respondent has contended that BPS Charges are independent and unrelated to the UI charges and are levied on the petitioner for under generation or non-generation of electricity in deviation of its schedule given. The respondent has submitted that UI is only a mechanism for grid discipline but cannot overreach the BPS Charges being levied by it.

19. The respondent, SLDC Karnataka has submitted that a generating company such as the Petitioner provides its schedule for generation of electricity on a day ahead basis in terms of the provisions of the Grid Code. Once the generation schedule is provided and finalised, the generator is required to adhere with the schedule. Any under-generation or over-generation of electricity is treated in terms of the Unscheduled Interchange (UI) mechanism. The generator may generate electricity less than the schedule in which case UI charges are levied, and for over-generation UI charges are payable, However, when the generator also requires electricity for its own use, for example for start-up purposes, synchronisation purposes etc. In such cases, the generator is a consumer of electricity and draws electricity from the grid and the same is accounted for as a supply by the distribution licensee. For such consumption of electricity by the generator, the retail supply tariff decided by the State Regulatory Commission is to become applicable and has been made applicable by the various State Commissions in the country.

20. The respondent, SLDC Karnataka has submitted that the Karnataka Commission, had, vide amendment dated 31.5.2006, amended the provisions of the Karnataka Open Access Regulations and provided that in case of outages of the generator, the drawal of power needs to be charged as per the temporary tariff of the relevant consumer tariff category for such drawal of electricity. The above charges are to be collected by the respondent and then disbursed to the distribution licensees in accordance with the Regulations of the Karnataka Commission. In this regard, Regulation 18 of the Karnataka Open Access Regulations, inter-alia, provide as under:

"Collection and Disbursement of charges

The charges may be collected either by the distribution licensee, the transmission licensee or the STU, depending on whose facilities are used for availing open access-In-all-cases the amounts-Collected-from a particular consumer should be given to the distribution licensee in whose area the consumer is located. In case of two licensees supplying in the same area the licensee from whom the consumer was availing supply shall be paid the amounts collected.

Provided further that transmission charges shall be payable to the concerned transmission licensee."

21. In terms of the above, all the generators and other open access customers who do not have any contracted supply with the distribution licensee but draw electricity for their use are charged temporary tariff of the relevant tariff category as determined by the Karnataka Commission. Since the consumption of electricity is within the exclusive jurisdiction of the Karnataka Commission, the tariff category and the tariff orders as made applicable by the Karnataka Commission is to be implemented by the Respondent.

22. Respondent has further stated that in accordance with the above, all the generators including the Petitioner have been uniformly levied the tariff for the drawal of electricity from the grid as per the temporary tariff applicable. All such levy by the Appellant to the generators connected to the transmission system is remitted to the

distribution licensee in accordance with the Regulations and directions of the Karnataka Commission. Such supply is treated as supply by the distribution licensee and the amounts so paid for the consumption by the generators is treated as a part of the revenue of the licensee in the tariff determination exercise of the Karnataka Commission.

23. The Commission observed that the Petitioner is covered by the orders of the Commission dated 19.11.2012 in Petition No. 1/MP/2012 and 124/MP/2014 filed by Sadashiva Sugars Ltd and Falcon Tyres Ltd. respectively and dated 1.5.2013 in Petition No. 165/MP/2012 filed by BMM Ispat Limited.

24. Subsequent to passing of orders in present batch of Petitions, the Commission vide its order dated 3.7.2014 passed order dated 3.7.2014 in Petition No. 293/MP/2013 (Janki Corpn. Matter). The relevant extracts of order dated 3.7.2014 is as under :

*“12. The petitioner’s next grievance relates to billing of the Backup Supply Charges and fixed charges. The petitioner has contended that no such charges are payable under the Open Access Regulations. We are of the view that in case the petitioner is drawing power from the State Grid for any propose it cannot repudiate its liability to pay the charges for the power consumed. However, the charges have to be billed and collected in accordance with the regulations or orders of the State Commission. If there are no regulations or orders of the State Commission requiring back-up supply charges and fixed charges, the petitioner cannot be saddled with such charges. In terms of Regulations 20 (6) of CERC Open Access Regulations, no charges other than those prescribed under Regulations 20 (5) is payable by an intra-State entity availing inter-State open access, in absence of any rate specified by the State Commission.*

.....  
15 In view of the above discussion, the prayers of the petitioner are allowed as under:

*(a) While availing the inter-State open access, the petitioner is not liable to pay any charges except those specified under the CERC Open Access Regulations*

*(b) The petitioner shall be billed for the UI Charges in accordance with clause (5) of Regulation 20 of CERC Open Access Regulations specified by the Commissions.*

*(c) The petitioner shall be entitled for interest @9% per annum on the UI charges, if any withheld, by the respondent.*

(d) The backup supply charges and fixed charges shall be governed by the Regulations of KERC only.

25. Aggrieved by the Commission's order in the present batch Petitions, the Respondent, State Load Dispatch Centre- Karnataka approached Appellate Tribunal vide different Appeals as under :

S. No.	Petition No.	Appeal No. in Appellate Tribunal
1.	1/MP/2012	26 of 2013
2.	124/MP/2012	49 of 2013
3.	82/MP/2013	144 of 2014
4.	10/MP/2014	166 of 2015

26. Before the Appellate Tribunal, the Respondent, did not raise the issue pertaining to UI Charges and restricted the appeal to the extent of setting aside of 'Back up Supply Charges' by this Commission.

27. The Appellate Tribunal vide its judgment dated 16.4.2019 disposed of Appeal No. 26 of 2013 & Batch. The relevant extracts of the Appellate Tribunal judgment dated 16.4.2019 is as under :

*"8.5 We have carefully considered the submissions of learned counsel for the Appellant as well as learned counsel for the Respondents and also taken note of various judgments relied upon by the learned counsel. It is not in dispute that the Respondent generators were granted open access under the CERC Open Access Regulations for Inter-state transactions of power. As required under the Central Regulations, the generators were also given No Objection Certificate from the State Load Despatch Centre of Karnataka. **It is the contentions of the learned counsel for the Appellant that when these generating companies which are connected with the State Grid draw electricity from the State Grid, they are liable for paying the backup supply charges under the KERC Regulations, 2004. Learned counsel for the Appellant has vehemently submitted that whatever charges under the KERC Regulations for consumption of electricity from the State Grid are applicable, the Central Commission has no power either under the Act or any other law to interpret or set aside such levies / charges decided by the statutory regulations of the State Commission. It is, however, the contention of the learned counsel for the Respondents that once generators are provided with Open Access under CERC Regulations, 2008, no charges other than those specified under these Regulations shall be payable by any person granted short term open access under these Regulations namely the Regulations 20 (6). The Regulation 11 (viii) of KERC Open Access Regulations, 2004 (as amended) provides as under:***

*Charges for arranging back up supply from the grid shall be payable by the open access customer in the event of failure of contracted supply. In case of*

outages of generators supplying to a consumer on open access, standby arrangements should be provided by the licensee on payment of tariff for temporary connection to that consumer category as specified by the Commission

8.6 While we note that there does not appear any material controversy in the Open Access Regulations of CERC and KERC, the entire dispute has arisen out of the interpretation of backup power supply charges vis.- a.-vis. supply charges and much less due to inconsistent orders passed by CERC in the case of Janki Corporation Limited & other generating companies. It is noticed that in fact CERC have taken inconsistent view in its other orders while comparing with its decision in Janki case. For ready reference, we thought fit to refer the Para 12 & Para 15(d) of the Janki decision as under:

“12. The petitioner’s next grievance relates to billing of the Backup Supply Charges and fixed charges. The petitioner has contended that no such charges are payable under the Open Access Regulations. We are of the view that in case the petitioner is drawing power from the State Grid for any propose it cannot repudiate its liability to pay the charges for the power consumed. However, the charges have to be billed and collected in accordance with the regulations or orders of the State Commission. If there are no regulations or orders of the State Commission requiring back-up supply charges and fixed charges, the petitioner cannot be saddled with such charges. In terms of Regulations 20 (6) of CERC Open Access Regulations, no charges other than those prescribed under Regulations 20 (5) is payable by an intraState entity availing inter-State open access, in absence of any rate specified by the State Commission.

13....

14....

15....(d) The backup supply charges and fixed charges shall be governed by the Regulations of KERC only”

8.7 We find no force in the submissions of learned counsel for Respondents that at Para 12 & 15 (d) of the Janki decision, due to apparent typographical error, instead of ‘Central Commission’, the expression “State Commission” has been used. We opine that such submissions advanced by learned counsel for the Respondents is unsustainable in law on the ground that the decision in Janki case rendered by larger bench relies upon, earlier decisions at Paragraph 14 and has to read in light of the earlier decisions of the CERC in Sadashiva Sugars and Falcon Tyres. **We thus hold that the generating companies provided with Open Access for inter-state transactions under CERC Regulations are not liable to pay any additional charges as per Regulations 20(6), however, any power consumed from the State Grid through the local distribution licensee is chargeable as per the KERC Regulations by considering temporary tariff under relevant category of consumers.** However, these supply charges cannot be equated with backup supply charges as being contemplated by the Appellant,

**8.8 In light of these facts and circumstances of the case in hand, we are of the considered opinion that the inconsistencies appearing in various referred orders of CERC in different petitions, as stated supra, need to be corrected through a corrigendum along with clear cut directions that charges for the electricity consumed by the generating companies from the State Grid for any purpose would need to paid by them as per KERC Regulations.**

.....  
Our Findings:-

9.3 After thoughtful consideration of the rival contentions of the learned counsel for the Appellant and learned counsel for the Respondent companies and also took note of various judgments relied upon by the learned counsel and various provisions of the Electricity Act, 2003. It is not in dispute that wherever the proposed bilateral transaction has a state utility or an intra-state entity as a buyer or seller concurrence of SLDC shall be obtained in advance and submitted along with application to the nodal agency. Further, under the proviso of Section 31 (2) of the Act, it is clearly envisaged as under:-  
“Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre:

Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.”

As per Section 32 (3), the SLDC is empowered to levy and collect such fee and charges from the generating companies and licensees engaged in Intra-state transmission of electricity as may be specified by the State Commission. Regulation 18 of KERC Regulations, 2006 provide that the charges may be collected either by the distribution licensee, the transmission licensee or the STU depending on whose facility are used for availing opening access. In all such cases, the amount so collected from a particular consumer should be given to a distribution licensee in whose area the consumer is located. **In view of these facts, there is nothing illegal that if SLDC issues invoices in lieu of power supply charges on behalf of distribution licensees and collects such charges and in turn remits the amount in the account of local distribution licensee. We are of the opinion that such activities on part of the SLDC/Appellant in no way or amounts to the business of electricity supplies or trading. Hence, we are of the considered opinion that the action of the Appellant in issuing the invoices to the Respondent Generating companies for supply of power from the State Grid is not in violation of law or Regulations**

Summary of Our Findings:-

10. After microscopic evaluation of the entire material available on records and after taking into consideration the discussion, reasoning and findings regarding Issue Nos. 1 & 2 mentioned above, **we are of the considered opinion that as specified under the CERC Open Access Regulations, no charges other than those specified under Regulation 20 (6) shall be payable by any person granted short term open access under these Regulations. However, if any generating company consumes power from the state grid for any purpose, it is liable to pay supply charges as applicable under the KERC Regulations, 2004 (as amended).** Accordingly, the orders passed by CERC in various petitions stipulated above (Janki orders and others) would need to be corrected to remove, pointed out inconsistencies and also, to provide clarity on various charges namely backup supply charges and distribution/supply charges. In view of these facts and circumstances of the case, the instant appeals deserve to be partly allowed and the impugned orders passed by the first Respondent/CERC are liable to be set aside so far it relate to the findings in the preceding paragraph above.

#### **ORDER**

Having regard to the factual and legal aspects of the matter as stated above, we are of the considered opinion that issues raised in the appeals have merits and hence,



*these appeals are partly allowed. The impugned orders passed by first Respondent/Central Electricity Regulatory Commission dated 19.11.2012, 24.12.2012, 20.01.2014 and 29.04.2015 in Petition Nos.1/MP/2012, 124/MP/2012, 82/MP/2013 and 10/MP/2014 respectively are hereby set aside so far it relate to the prayer sought in the instant appeal. The matter stands remitted back to the first Respondent/CERC with the direction to pass the appropriate order in compliance of the observations made in Paragraph No.10 of this judgment, as stated above, as expeditiously as possible at any rate within a period of six months from the date of appearance of the parties*

28. Before the Appellate Tribunal, the Appellant, SLDC Karnataka, argued that whenever generating companies which are connected with the State Grid draw electricity from the State Grid, are liable for paying the backup supply charges under the KERC Regulations, 2004. Whereas, the petitioners (the respondent therein) argued that once generators are provided with Open Access, no charges other than those specified under these Regulations shall be payable by any person granted short term open access under these Regulations namely the Regulations 20 (6).

29. The Appellate Tribunal observed that , if any generating company consumes power from the state grid for any purpose, it is liable to pay supply charges as applicable under the KERC Regulations, 2004. APTEL has further directed that the orders passed by CERC in various petitions stipulated above (Janki orders and others) would need to be corrected to remove, pointed out inconsistencies and also, to provide clarity on various charges namely backup supply charges and distribution/supply charges.

30. Accordingly, the Appellate Tribunal remanded back the matter to this Commission to provide clarity on various charges namely backup supply charges and distribution/supply charges.

**Proceeding before this Commission subsequent to Remand back of the matter**



31. Subsequent to remand back of the matter, the present batch Petitions were listed before this Commission on 6.8.2019. During the hearing of 6.8.2019, the Petitioners requested for adjournment in the matters due to non-availability of the senior counsel. Thereafter, the matter was listed on 24.9.2019. During the hearing of 24.9.2019, the Commission was apprised that the Petitioner, Shamanur Sugars Limited has filed the Civil Appeal before the Hon'ble Supreme Court against the APTEL order dated 12.4.2019 and requested to keep the present Petitions pending till the outcome of the decision in Appeal filed before the Hon'ble Supreme Court. Thereafter, the matter was listed on 22.3.2022, wherein the Commission was apprised again that Shamanur Sugars Limited has filed an Appeal before the Hon'ble Supreme Court against the judgment dated 16.4.2019 and it is expected to be listed soon and sought a short adjournment. During the hearing dated 22.3.2022, the Commission observed as under :

*“3. The Commission observed that these matters were already adjourned on the request of the Petitioners on 24.9.2019 and they cannot be adjourned any further as these are old matters and need to be disposed of at the earliest. It was observed that any stay has not been brought by the petitioner. The Commission directed the Petitioners and SLDC, Karnataka to file written submissions by 5.4.2022 after serving a copy to each other and reserved order. The parties were further directed to file, a brief notes of argument not exceeding three pages containing highlights of the written submissions for a quick look by the commission.”*

32. During the hearing dated 22.3.2022 of the present batch Petitions along with Petition No. 70/MP/2018, the Commission directed SLDC, Karnataka to clarify, how an open access consumer like the Petitioner shall be charged in the below mentioned conditions and the same has been replied by SLDC Karnataka vide its affidavit date 13.6.2022 in Petition No. 70/MP/2018 as follows:

	<b>Suppose schedule after sale in Power Exchange is 80 MW in each time block between 1PM to 2 PM on a particular day</b>	
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Time Block	Schedule injection	Actual Injection/Drawal (+/-)	Query of the Commission	Reply of SLDC Karnataka
1.00 PM - 1.15 PM	80 MW	0 MW	Whether SLDC raises any bill for Deviation? If yes for what quantum and at what rate?	Yes, SLDC raises the Bill as per the clause 3.1 and 3.9 of CERC (Deviation, Settlement Mechanism and Related Matters) and their Amendments from time to time.
1.15 PM - 1.30 PM	80 MW	(-) 20 MW	Whether SLDC shall raise bill for Backup supply charges? Whether discom shall raise bill for backup supply charge?	In case of back-up supply charges, SLDC was raising bills upto May, 2021. From June, 2021 onwards back up supply charges is not being billed by SLDC.
1.30 PM - 1.45 PM	80 MW	40 MW	Whether SLDC shall raise bill for Deviation charges – If yes, for how much quantum and at what rate?	SLDC has raises bill as per clause 3.1 to 3.9 of CERC Regulations 2018 (Deviation, Settlement Mechanism and Related Matters) Regulations 2014 and their amendments from time to time.
1.45 PM - 2.00 PM	80 MW	90 MW	Whether SLDC bills for Deviation charges at what rate and is amount receivable by entity	SLDC has raises bill as per clause 3.1 to 3.9 of CERC Regulations 2018 (Deviation, Settlement Mechanism and Related Matters) Regulations 2014 and their amendments from time to time.
<b>Suppose from 2pm- 3pm there is no sale schedule</b>				
2.00 PM - 2.15 PM	- MW	(-) 50 MW	Whether DISCOM shall raise bill or SLDC shall raise bill for back up supply charges?	In case of back-up supply charges, SLDC was raising bills upto May, 2021. From June, 2021 onwards back up supply charges is not being billed by SLDC.

Illustration of billing of Deviation is as under :

Case 1

Schedule 80 MW  
Injection 0 MW

SLDC raises the bill for deviation up to 12% (9.6 MW) normal frequency rates and beyond 12% as detailed below :

For under injection above 12% & upto 15% of deviation (in this case for 2.4 MW)- Equivalent to 20% of the cap rate of deviation of 303.04 paisa/kwh or the charge for deviation corresponding to average grid frequency of the time block, whichever is less.

For under injection above 15% & upto 20% of deviation (in this case for 4 MW)- Equivalent to 40% of the cap rate of deviation of 303.04 paisa/kwh or the charge for deviation corresponding to average grid frequency of the time block, whichever is less.

For under injection in excess 20% of deviation (in this case for 64 MW)- Equivalent to 100% of the cap rate of deviation of 303.04 paisa/kwh or the charge for deviation corresponding to average grid frequency of the time block, whichever is less.

### **Analysis and Decision**

33. We have gone through our earlier orders in the present batch of Petitions. The present issue pertains to levy of back-up supply charges by Karnataka SLDC under Regulation 11 (viii) of KERC Open Access Regulations, 2004 (as amended), which provides as under:-

*“Charges for arranging back up supply from the grid shall be payable by the open access customer in the event of failure of contracted supply. In case of outages of generators supplying to a consumer on open access, standby arrangements should be provided by the licensee on payment of tariff for temporary connection to that consumer category as specified by the Commission.*

34. In Petition No. 293/MP/2013 (Janki Corpn. Case) , the issue was similar to that of the present batch of Petitions. Commission vide Order dated 3.7.2014 in Petition No. 293/MP/2013 directed as follows:

*“15 In view of the above discussion, the prayers of the petitioner are allowed as under:*

*(a) While availing the inter-State open access, the petitioner is not liable to pay any charges except those specified under the CERC Open Access Regulations*

*(b) The petitioner shall be billed for the UI Charges in accordance with clause (5) of Regulation 20 of CERC Open Access Regulations specified by the Commissions.*

(c) *The petitioner shall be entitled for interest @9% per annum on the UI charges, if any withheld, by the respondent.*

**(d) *The backup supply charges and fixed charges shall be governed by the Regulations of KERC only.***

35. Vide the abovesaid Order in Petition No. 293/MP/2013, we observed that in case the petitioner is drawing power from the State Grid for any propose it cannot repudiate its liability to pay the charges for the power consumed and the charges have to be billed and collected in accordance with the regulations or orders of the State Commission. We also held that the backup supply charges and fixed charges shall be governed by the Regulations of KERC only.

36. The Appellate Tribunal in its judgment dated 16.4.2019 has directed as follows:

*“.....We thus hold that the generating companies provided with Open Access for inter-state transactions under CERC Regulations are not liable to pay any additional charges as per Regulations 20(6), however, any power consumed from the State Grid through the local distribution licensee is chargeable as per the KERC Regulations by considering temporary tariff under relevant category of consumers. However, these supply charges cannot be equated with backup supply charges as being contemplated by the Appellant.*

*8.8 In light of these facts and circumstances of the case in hand, we are of the considered opinion that the inconsistencies appearing in various referred orders of CERC in different petitions, as stated supra, need to be corrected through a corrigendum along with clear cut directions that charges for the electricity consumed by the generating companies from the State Grid for any purpose would need to paid by them as per KERC Regulations.”*

...

*9.3.....As per Section 32 (3), the SLDC is empowered to levy and collect such fee and charges from the generating companies and licensees engaged in Intra-state transmission of electricity as may be specified by the State Commission. Regulation 18 of KERC Regulations, 2006 provide that the charges may be collected either by the distribution licensee, the transmission licensee or the STU depending on whose facility are used for availing opening access. In all such cases, the amount so collected from a particular consumer should be given to a distribution licensee in whose area the consumer is located. In view of these facts, there is nothing illegal that if SLDC issues invoices in lieu of power supply charges on behalf of distribution licensees and collects such charges and in turn remits the amount in the account of local distribution licensee. We are of the opinion that such activities on part of the SLDC/Appellant in no way or amounts to the business of electricity supplies or*

*trading. Hence, we are of the considered opinion that the action of the Appellant in issuing the invoices to the Respondent Generating companies for supply of power from the State Grid is not in violation of law or Regulations.*

As per above APTEL gave a clear finding that power consumed from State grid by generating companies is chargeable as per the KERC Regulations. Further SLDC can levy such charges on behalf of distribution licensee.

37. Regulation 20 (4) & 20(6) of Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 read as under :

*“(4) Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.”*

*(6) In an interconnection (integrated A.C. grid), since MW deviations from schedule of an entity are met from the entire grid, and the local utility is not solely responsible for absorbing these deviations, restrictions regarding magnitude of deviations (except on account of over-stressing of concerned transmission or distribution system), **and charges other than those applicable in accordance with these regulation** (such as standby charges, grid support charges, parallel operation charges) shall not be imposed by the State Utilities on the customers of inter-State open access.”*

A reading of above Regulation makes it clear that the mismatch between schedules and actual will be covered in the intra- state UI accounting scheme. Regulation 20 (6) makes it clear that no charges other than those applicable in accordance with these regulations shall be applied on the open access customers.

38. We observe that SLDC Karnataka has replied that in case of under injection by a generating station, it is levying UI charges and no other charges, however in case of drawal from grid, it is levying backup supply charges as per KERC Regulations.

39. An illustrative example to understand the issue is as follows:

Suppose a cogeneration or a captive power plant takes an injection schedule for sale of power through ISTS , however actual injection may vary in different scenarios. The treatment for same as construed from replies filed by Karnataka SLDC is as follows:

	<b>Schedule injection (in a time block)</b>	<b>Actual Injection/Drawal (+/-) (in a time block)</b>	<b>Treatment</b>
Scenario 1	80 MW	0 MW	UI charges for under injection
Scenario 2	80 MW	(-) 20 MW	Bill for consumption of power for 20 MW under backup supply or supply to be raised as per KERC Regulations.
Scenario 3	80 MW	40 MW	UI charges for under injection
Scenario 4	80 MW	90 MW	UI charges for over injection
<b>Suppose there is no sale schedule</b>			
Scenario 5	- MW	(-) 50 MW	Bill for consumption of power for 50 MW under backup supply or supply to be raised as per KERC Regulations.

40. We are of the view that if a generating station which is under State Control area, draws power from state-grid, for any purpose, the same shall not be covered under Regulation 20(6) of Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and shall be governed by the Regulations of State Commission for payment of charges for such consumption. Our Orders dated 19.11.2012 in Petition No. 1/MP/2012, 24.12.2012 in Petition No. 124/MP/2012 , 20.1.2014 in Petition No. 82/MP/2013 and 24.3.2017 in Petition No. 10/MP/2014 stands modified to the extent of above directions.

41. Petitions No. 1/MP/2012, 124/MP/2012, 82/MP/2013 and 10/MP/2014 are disposed of, in terms of above

**Sd/-  
(P. K. Singh)  
Member**

**Sd/-  
(Arun Goyal)  
Member**

**Sd/-  
(I. S. Jha)  
Member**